REMARKS/ARGUMENTS

The Applicants have carefully considered this Application in connection with the Examiner's Action and respectfully request reconsideration of this Application in view of the foregoing Amendment and the following remarks.

The Applicants originally submitted Claims 1-21 in the Application. The Applicants amend independent Claims 1, 8 and 15, and incorporate dependent Claims 5, 12, and 19, respectively, which are cancelled without prejudice or disclaimer. Dependent Claims 22-24 are new.

Accordingly, Claims 1-4, 6-11, 13-18, and 20-24 are currently pending in the Application. Support for the present Amendments can be found in paragraphs [0010-0011], [0016-0017], [0027-0029], [0031], [0038], and FIG. 3 of the present Application.

I. Rejection of Claims 8-14 under 35 U.S.C. §101

Claims 8-14 are rejected under 35 U.S.C. §101 by the Examiner because purportedly Claims 8-14 are directed to non-statutory subject matter, and therefore the 35 U.S.C. §101 rejection of the Examiner's Action of September 22, 2006 is maintained. Although the Applicants respectfully disagree with the Examiner as to the propriety of these rejections, for the purposes of expediting prosecution, the Applicants amend independent Claim 8. The Applicants therefore respectfully request that the Examiner to withdraw the 35 U.S.C. §101 rejection of these claims.

II. Rejection of Claims 1-21 under 35 U.S.C. §103

The Examiner has rejected Claims 1-21 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,854,897 Radziewicz *et al.* ("Radziewicz".)

Claim 1 as currently amended is directed to a media and advertisement player for use with a computer network. The media and advertisement player comprises a media player that receives media from a remote system via the computer network and plays the media in response to customer requests, wherein the media is selected from the group consisting of: audio music, music videos and skins. The media and advertisement player further comprises an advertisement player that receives advertisements and a corresponding advertising schedule from the remote system via the computer network and plays the advertisements according to the advertising schedule. **The advertising schedule is dependent upon plays of a content of said media.** The media and advertisement player further comprises a tracking subsystem that generates as-run logs containing records of a playing of the contents of the media and the advertisements and transmits the as-run logs to the remote system via the computer network. (Emphasis added).

As discussed previously, Radziewicz is generally directed to "a network communications marketing system which provides announcements to a station whenever the station or line connecting the station to a communications network is idle... The announcements are provided until the station or line is no longer idle." (*See* column 2, lines 3-8.) In Radziewicz, a data terminal equipment ("DTE") 14 interacts with a network service provider ("NSP") 16. Advertisements are transmitted to the DTE 14 whenever a connection path 20 is idle, with the DTE displaying the advertisements. (*See* column 5, lines 47-54.)

Regarding Radziewicz, the Examiner states:

> Radziewicz does not state that media is selected from the group consisting of: audio music and music videos, he [Radziewicz] does disclose that audio and video data may be used (Col. 9, lines 1-23). The difference between the claimed "audio music and music videos" and the disclosed audio and video data are only found in the nonfunctional descriptive material and are not functionally involved in the method (or structurally programmed) steps recited. The steps would be performed the same regardless of data content. This, this descriptive material will not distinguish the claimed invention from the prior art in terms of Patentability... Therefore, it would have been obvious... to have received any type of audio of video data content. Such data content does not functionally relate to the steps and the subjective interpretation of the data content does not patentably distinguish the claimed invention. (*See* Examiner's Action, page 4.)

Claim 1 as presently amended recites that the advertising schedule is dependent upon plays of a content of the media. The media of amended Claim 1, as defined as consisting of audio music, music videos, and skins, is played in response to customer requests. In at least some embodiments, an advertising schedule is dependent upon a content of plays of the customer requests. The Applicants respectfully maintain that the media is indeed functionally involved in Claim 1.

Furthermore, the Examiner has cited Radziewicz as disclosing dependent Claim 5, now incorporated into independent Claim 1, with the additional claim language of a "content" of said media. The Examiner states that Radziewicz discloses: "wherein said advertising schedule is dependent upon plays of said media. (Col. 23, lines 17-32)." (*See* Examiner's Action, page 5.)

The Applicants respectfully disagree with this characterization of Radziewicz as it is applied to Claim 1 as currently amended. In Radziewicz (*See* col. 23, lines 17-32):

> Referring now to FIG. 5D, if the advertising timing option is enabled, then the announcement server 30 determines if the display time (i.e., the time spent displaying messages on the DTE 14) exceeds a predetermined time limit (step 350). If the predetermined time limit has not been exceeded, the announcement server 30 continues to display the advertisement until the predetermined time limit is reached

> or exceeded. Once the predetermined time limit has been exceeded, then at step 352, the announcement server 30 checks to determine if the user has aborted the session. If the user has aborted the session, the announcement server 30 executes the logout procedure at step 142 (FIG. 3D). If the user has not aborted the session, then the announcement server 30 returns to step 324 (FIG. 5B), and checks its database for further appropriate advertising messages to be transmitted to the DTE 14. (Emphasis added.)

In other words, an announcement server 30 of Radziewicz merely determines whether or not a user has aborted a session that displays advertisement messages after exceeding a predetermined time limit, and then the announcement server 30 determines the steps to be followed should such a predetermined limit be exceeded.

However, according to the present Application (*See* paragraph [0038]):

> In one sense, advertisements are like media. Accordingly, the advertising schedules may be based on aspects selected from the group consisting of: (1) geographic location of the media and advertisement players, (2) establishment type in which the media and advertisement players are located, (3) demographics of establishment in which the media and advertisement players are located, (4) time of day, (5) date, (6) day of week, (7) month of year and (8) season of year. In addition, however, advertisements may have additional considerations...

The Applicants respectfully state that Radziewicz does not disclose previously dependent Claim 5, now incorporated into amended independent Claim 1, with additional claim language. In the above cited passage of Radziewicz, it is determined whether predetermined time limits for an advertisement display time are exceeded. However, Radziewicz does not disclose or suggest an advertising schedule that governs how advertisements *when or under what circumstances advertisement player plays particular advertisements i.e., has an advertising schedule.* (*See* Application, paragraph [0037]). Instead, Radziewicz is directed to the outcomes of playing various advertisements, *i.e.,* whether or not a time limit has been exceeded and whether or not a user has

aborted a session. Radziewicz is not directed to an advertising schedule that is dependent upon plays of a content of the media.

In the Advisory Action of October 4, 2007 the Examiner states:

> [I]n response to the applicants arguments that Radziewicz does not teach scheduling advertisements based upon "plays of said media["] the Examiner notes that paragraph [0016] of the applicants specification provides an example of the claimed "plays of said media" in which indicates that advertisements can be displayed after certain media is selected by a customer. As disclosed by Radziewicz in Col. 23, lines 17-32, the determination of whether an advertisement is to be displayed is based upon whether on not the customer has selected media. If the customer selected media within a certain time frame, the advertisement is scheduled. Therefore, Radziewicz does disclosed scheduling advertising based upon the "plays of said media. (*See* Advisory Action, Section 11.)

Paragraph [0016] of the present Application states:

> In one embodiment of the present invention, the advertising schedule is dependent upon plays of the media. *Certain advertisements may play before or after certain media are selected by a customer. Certain other advertisements may not be allowed to play in the context of other media...* (Emphasis added)

Radziewicz fails to teach *scheduling* of plays of media. Specifically, it does not schedule certain advertisements as basis of a content of the media. "The broad definition of media includes informational or educational content, or any other content that may be desired to distribute to remote players." (*See* paragraph [0031]). For example, in the present Application:

> In addition, however, advertisements may have additional considerations. Some sets of advertisements are episodic, and therefore should be played in sequence. Further, some advertisements are most effective when played in context or not played at certain times. Proximity to particular media being played may be one germane aspect. For example, an advertisement for a Slim Whitman album may be most effectively played proximate the playing of a requested Slim Whitman song. An advertisement for a skateboard may, however, not be demographically consonant with that same Slim Whitman song. (*See*

paragraph [0038]).

Therefore, Radziewicz fails to teach or suggest the invention recited in independent Claim 1 and its dependent claims, when considered as a whole. For similar reasons, Radziewicz fails to teach or suggest the invention recited in independent Claim 8 and 15 and their dependent claims, when considered as a whole. Claims 1-4, 6-11, 13-18 and 20-21 are therefore not obvious in view of Radziewicz.

In view of the foregoing remarks, the cited references do not support the Examiner's rejection of Claims 1-4, 6-11, 13-18 and 20-21 under 35 U.S.C. §103(a). The Applicants therefore respectfully request the Examiner withdraw the rejections.

III. Conclusion

In view of the foregoing amendment and remarks, the Applicants now see all of the Claims currently pending in this Application to be in condition for allowance and therefore earnestly solicit a Notice of Allowance for Claims 2-7, 9-14 and 16-24.

The Applicants request the Examiner to telephone the undersigned attorney of record at (972) 480-8800 if such would further or expedite the prosecution of the present Application. The Commissioner is hereby authorized to charge any fees, credits or overpayments to Deposit Account 08-2395.

Respectfully submitted,

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Dated: October 5, 2007

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